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Nos. 89-1838, 89-1845

# In the Supreme Court of the United States

OCTOBER TERM, 1990

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PETITIONER

*v.*

ARABIAN AMERICAN OIL CO., ET AL.

ALI BOURESLAN, PETITIONER

*v.*

ARABIAN AMERICAN OIL CO., ET AL.

*ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## JOINT APPENDIX

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*ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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**JOINT APPENDIX**

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-2206

ALI BOURESLAN, PLAINTIFF-APPELLANT

*v.*

ARAMCO, ARABIAN AMERICAN OIL CO. AND ARAMCO SERVICES COMPANY, DEFENDANTS-APPELLEES

**DOCKET ENTRIES**

| | |
|---|---|
| 10/17/88 | Opinion Rendered [by the panel] |
| 11/7/88 | Flg. Order GRANTING motion of former amicus, the U.S. E.E.O.C. for leave to intervene as an appellant in the ongoing appeal of this cause. (WED). |
| 11/14/88 | Petition for Rehearing (J) BOURESLAN |
| 11/14/88 | Petition for Rehearing (J) EEOC |
| 12/23/88 | Order on Petition for Rehearing |
| 12/23/88 | Filing order that case be reheard en banc with oral argument before all active judges. |
| 2/2/90 | Opinion Rendered [by the court sitting *in banc*] |
| 2/2/90 | Flg. & Entg. Judgment |
| 2/26/90 | Jdgt. as Mdt. Issd. to Clerk |

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

---

No. H-85-3506

ALI BOURESLAN, PLAINTIFF

*v.*

ARAMCO, ARABIAN AMERICAN OIL COMPANY
AND ARAMCO SERVICES COMPANY, DEFENDANTS

---

**DOCKET ENTRIES**

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6/20/85 ORIGINAL COMPLAINT, with JURY DEMAND, filed.

9/12/85 ARAMCO'S ORIGINAL ANSWER, filed, kk dkt'd 9-13-85

3/18/86 Deft's, Aramco Services Company, ORIGINAL ANSWER, filed, jr dkt'd 4/9/86

10/24/86 Pltf's FIRST AMENDED ORIGINAL PETITION, filed. jr dkt'd 10/27/86

10/30/86 Deft, ARAMCO'S MOTION TO DISMISS, filed. jr dkt'd 10/31/86

10/30/86 Deft, ARAMCO'S MEMORANDUM OF AUTHORITIES in Support of Motion to Dismiss, filed. jr dkt'd 10/31/86

10/30/86 Deft, ARAMCO SERVICES' MOTION TO DISMISS, filed. jr dkt'd 10/31/86

10/30/86 Deft, ARAMCO SERVICES' MEMORANDUM OF LAW in Support of Motion to Dismiss, filed. jr dkt'd 10/31/86



10/30/86 Deft, ARAMCO SERVICES' SECOND MOTION TO DISMISS, filed. jr dkt'd 10/31/86

10/30/86 Deft, ARAMCO SERVICES' MEMORANDUM OF LAW in Support of Second Motion to Dismiss, filed. jr dkt'd 10/31/86

10/30/86 AFFIDAVIT OF MOHAMMED SAEED AL-ALI, filed. jr dkt'd 10/31/86

11/10/86 (JDA) ORDER, filed. Parties ntf'd. jr Defts unopposed Motion for Leave to file Dispositive motions is GRANTED. Pltf shall respond to deft's Motion to Dismiss and Second motion to dismiss by Dec. 1, 1986. Pretrial conference is set for Dec. 10, 1986 at 3:30 p.m. dkt'd 11/12/86

11/14/86 AFFIDAVIT OF AHMED S. HUMAID, filed. jr dkt'd 11/17/86

11/14/86 DECLARATION OF ISMAIL S. NAZER, filed. jr dkt'd 11/17/86

11/14/86 Pltf's RESPONSE TO DEFT, ARABIAN AMERICAN OIL CO'S MOTION TO DISMISS, filed. jr dkt'd 11/17/86

11/14/86 Pltf's RESPONSE TO DEFT ARAMCO SERVICES CO'S FIRST MOTION TO DISMISS, filed. jr dkt'd 11/17/86

11/14/86 Pltf's RESPONSE TO DEFT ARAMCO SERVICES CO'S SECOND MOTION TO DISMISS, filed. jr dkt'd 11/17/86

11/14/86 Pltf's MEMORANDUM OF LAW IN SUPPORT OF PLTF ALI BOURESLAN'S RESPONSE TO DEFT ARAMCO SERVICES CO'S SECOND MOTION TO DISMISS, filed. jr dkt'd 11/17/86

11/18/86 Pltf's SUPPLEMENTAL RESPONSE to deft Aramco Service Co.'s Second Motion to Dismiss, filed. db

11/18/86 Plft's SUPPLEMENTAL RESPONSE to deft Aramco's First Motion to Dismiss, filed. db dkt'd 11/19/86

11/25/86 JOINT PRETRIAL ORDER, FILED. w/
1. Pltf's Witness List
2. Deft's Witness List jr dkt'd 12/1/86

12/9/86 Deft, Aramco Services Company's MEMORANDUM in Reply to Pltf's Response to Deft Aramco Services Co's First Motion to Dismiss, filed. jr dkt'd 12/9/86

12/9/86 Deft, Aramco Services Company's MEMORANDUM in Reply to Pltf's Response to Deft Aramco Services Co's Second Motion to Dismis, filed. jr dkt'd 12/9/86

12/10/86 AFFIDAVIT of Seth L. Sharr, filed. jr dkt'd 12/10/86

12/10/86 (JDA) PRETRIAL/MOTION CONFERENCE ORDER, filed. Parties ntf'd. jr.

APPEARANCES: Perry Archer f/pltf; John Roady, Linda Headley & Bob Horton f/deft (Rptr: H. Chester)

1. Def'ts Motion to Dismiss is taken under advisement. The court will rule on the record.
2. Trial is RESET to April 6, 1987 at 9:30 a.m.
3. Discovery is EXTENDED to Feb. 28, 1987.



4. If appropriate, an amended pretrial order may be filed by Mar. 20, 1987.
5. Deft ASC is GRANTED leave to file an amended answer. dkt'd 12/12/86

12/10/86 Pltf's RESPONSE to Deft Aramco Services Company's Memo in Reply to Pltf's Response to Deft Aramco Services Co's First and Second Motions to Dismiss, filed. jr dkt'd 12/15/86

12/15/86 Deft, Arabian American Oil Co's SUPPLEMENTAL MEMORANDUM of Deft Arabian American Oil Co in Support of Its Motion to Dismiss and in Reply to Pltf's Response to Such Motion, filed. jr dkt'd 12/15/86

12/15/86 Deft Aramco Services Co's SUPPLEMENTAL MEMORANDUM in Reply to Pltf's Response to Deft Aramco Services Co's First Motion to Dismiss, filed. jr dkt'd 12/15/86

12/15/86 Deft Aramco Services Co's MOTION FOR ORAL HEARING, filed. jr (RE: Motion to Dismiss and Second Motion to Dismiss). dkt'd 12/15/86

12/15/86 Pltf, Ali Boureslan's SUPPLEMENTAL BRIEF AND MEMORANDUM OF AUTHORITIES in Support of the Extraterritorial Application of Title VII, filed. jr dkt'd 12/15/86

12/16/86 Plft's RESPONSE to Deft Aramco Services Co's Motion for Oral Hearing, filed. jr dkt'd 12/18/86

1/27/87 (JDA) MEMORANDUM AND ORDER, filed. Parties ntfd. Defts' Motions to dismiss granted. Dktd 1-3-87, cat.

1/27/87 (JDA) FINAL JUDGMENT, filed. Parties ntf. Final judgment entered for defts. Dktd 1-30-87, cat.

2/25/87 Pltf. NOTICE OF APPEAL to Final Judgment entered Jan. 27, 1987, filed. mac



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

---

Civil Action No. H-85-3506

ALI BOURESLAN, PLAINTIFF

*v.*

ARABIAN AMERICAN OIL COMPANY AKA ARAMCO, AND ARAMCO SERVICES COMPANY, DEFENDANTS

---

[Filed Oct. 24, 1986]

---

**COMPLAINT: DISCRIMINATION**

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**PLAINTIFF ALI BOURESLAN'S**
**FIRST AMENDED ORIGINAL PETITION**

THE HONORABLE JUDGE OF SAID COURT:

**I.**

**INTRODUCTION**

1. This is an action seeking redress for the violation of rights guaranteed to the Plaintiff by Title VII of the Civil Rights Act of 1964, and other laws of the United States of America and the State of Texas.

2. The Plaintiff is a naturalized American citizen who was born in Lebanon, and is by race an Arab whose religion is Moslem.

## II.

## JURISDICTION

3. Jurisdiction of this Court is invoked under Title VII of the Civil Rights, Act, 42 U.S.C. 2000(e) and applicable laws of the State of Texas.

4. The Plaintiff filed complaint with the Equal Employment Opportunity Commission and on April 17, 1985, was given a Notice of Right to Sue.

5. This action is timely filed.

## III.

## PARTIES

6. Plaintiff is a resident of El Paso, Texas.

7. Defendants ARABIAN AMERICAN OIL COMPANY aka ARAMCO, and ARAMCO SERVICES COMPANY have been served with process and their Original Answers are currently on file with this Honorable Court.

## IV.

## ALLEGATIONS

8. On or about July, 1979, Plaintiff began working for ARAMCO SERVICES COMPANY. On or about November, 1980, Plaintiff transferred to and began working for ARABIAN AMERICAN OIL COMPANY aka ARAMCO. Plaintiff was hired in Texas.

9. At all times up to Plaintiff's wrongful discharge by Defendants, Plaintiff performed his duties as an engineer in a satisfactory fashion.

10. Beginning in September, 1982, Plaintiff's supervisor began to systematically mistreat and harass Plaintiff. This mistreatment and harassment of Plaintiff began following disputes and arguments about Plaintiff's national origin, religion, and race. Mistreatment and harassment continued for a long period of time during which time Plaintiff complained to his superiors. Plaintiff's complaints were at first ignored.



11. In February, 1982, Plaintiff filed a formal grievance which resulted in apologies for the national origin, racial, and religious insults. At various times, Defendants' management personnel maintained to Plaintiff that his supervisor's racial and religion harassment was a personal matter between Plaintiff and his supervisor.

12. Up until early 1982, Defendants' evaluations of Plaintiff's performance were satisfactory or better.

13. In early 1982, as a result of Plaintiff's conflicts with Defendants about race, national origin, and religion, and the fact that Plaintiff had complained about the discrimination, Defendants set out to create a record that would justify firing Plaintiff. This was done despite Plaintiff's vigorous attempts to maintain his good standing and protect his job.

14. On June 16, 1984, Defendants terminated Plaintiff. At that time Plaintiff's salary was $4,114.00 per month.

15. The Plaintiff, up until the moment of his discharge, had earnestly complied with all of the Defendants' rules and policies.

16. On Information and belief, the reason given to the Plaintiff for his discharge was pretextual. The Plaintiff was actually discharged because of his national origin, race, and religion.

17. As a result of the aforementioned arbitrary and capricious act of the Defendants, the Plaintiff has suffered grievous harm, including, but not limited to, substantial loss of income and loss of benefits, including loss of health and life insurance policies.

18. The aformentioned acts and omissions by Defendants constitute violation of Plaintiff's rights under Title

VII Civil Rights Act and other laws including laws of the State of Texas.

WHEREFORE, it is respectfully requested that the Court assume jurisdiction herein and thereafter:

A. Declare the conduct of the Defendants to be violative of rights guaranteed to the Plaintiff under appropriate Federal law;

B. Direct the Defendants to reinstate the Plaintiff to his previously held position, with back pay and all other benefits, increments, etc., to which he is entitled;

C. Award the Plaintiff such other and further relief as the Court deems just, reasonable, appropriate, and necessary to correct the illegality and wrong done unto the Plaintiff; and,

D. Award the Plaintiff costs and reasonable attorneys' fees.

Respectfully submitted,

PASTER & ARCHER

By: /s/ Perry Archer
PERRY ARCHER
4409 Montrose, Suite 214
Houston, Texas 77006
713/527-9459
TBA No. 01291000

ATTORNEYS FOR PLAINTIFF
ALI BOURESLAN



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. H-85-3506

ALI BOURESLAN, PLAINTIFF

*v.*

ARABIAN AMERICAN OIL COMPANY AKA ARAMCO, AND ARAMCO SERVICES COMPANY, DEFENDANTS

[Filed Oct. 30, 1986]

**DEFENDANT ARABIAN AMERICAN OIL COMPANY'S MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

Arabian American Oil Company ("Aramco"), one of the Defendants in the above-captioned and numbered action, submits this its Motion to Dismiss pursuant to Rule 12(b)(1) and 12(h)(3) of the Federal Rules of Civil Procedure, and would respectfully show the following:

1. Plaintiff alleges that the terms of his employment by defendant in the Kingdom of Saudi Arabia violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.*, and other laws of the United States and the State of Texas.

2. Plaintiff's employment with Aramco was performed and terminated exclusively within the Kingdom of Saudi Arabia.

3. Plaintiff's claim under Title VII must be dismissed because Title VII does not have extraterritorial effect, and thus does not apply to Plaintiff's employment in Saudi Arabia.

4. The Labor and Workmen Law of the Kingdom of Saudi Arabia applies to all employment within Saudi Arabia, and application of Title VII in this case would unduly infringe on the sovereign right of the Kingdom of Saudi Arabia to regulate employment within its borders.

5. Upon dismissal of Plaintiff's federal claim for lack of subject matter jurisdiction, Plaintiff's pendent state law claims must also be dismissed.

6. Plaintiff's claim for relief under "other laws of the United States" must be dismissed because Plaintiff fails to state the basis for this court's subject matter jurisdiction of such nebulous claims.

WHEREFORE, PREMISES CONSIDERED, Defendant Aramco respectfully prays that Plaintiff's action be dismissed in its entirety, with prejudice, that judgment be entered in favor of Aramco and against Plaintiff; that Plaintiff take nothing; and that Defendant Aramco have such other and further relief, including attorney's fees, to which it may show itself justly entitled.

Respectfully submitted,

HUTCHESON & GRUNDY

By: /s/ MARK A. BRAND

Mark A. Brand
3300 Citicorp Center
1200 Smith Street
Houston, Texas 77002
(713) 951-2800

ATTORNEY IN CHARGE
FOR DEFENDANT,
ARABIAN AMERICAN OIL COMPANY



Of Counsel:

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3300 Citicorp Center
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

---

Civil Action No. H-85-3506

ALI BOURESLAN, PLAINTIFF

*v.*

ARABIAN AMERICAN OIL COMPANY AKA ARAMCO, AND
ARAMCO SERVICES COMPANY, DEFENDANTS

---

[Filed Oct. 30, 1986]

---

**DEFENDANT ARAMCO SERVICES COMPANY'S MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Aramco Services Company ("ASC"), one of the Defendants in the above-styled and numbered action, and files this its Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. In support of this motion, ASC will show the Court the following:

I.

Plaintiff alleges that he was terminated in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et seq.*, on the basis of race, national origin and religion.



II.

At the time of his termination, Plaintiff was employed by Defendant Arabian American Oil Company, not Defendant ASC.

III.

Pursuant to the provisions of Rule 12(b)(1) of the Federal Rules of Civil Procedure, this Court lacks jurisdiction over the subject matter, and therefore Plaintiff's claim against Defendant ASC should be dismissed with prejudice.

IV.

Pursuant to the provisions of Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiff's claim against Defendant ASC should be dismissed with prejudice for failure to state a claim upon which relief can be granted.

V.

Defendant ASC has filed a Memorandum of Law which outlines the authorities and arguments in support of this Motion to Dismiss.

WHEREFORE, PREMISES CONSIDERED, Defendant ASC respectfully prays that Plaintiff's action be dismissed in its entirety, with prejudice, that judgment be entered in favor of Defendant ASC and against Plaintiff, that Plaintiff take nothing and that Defendant ASC have

such other and further relief, including attorney's fees, to which it may show itself justly entitled.

Respectfully submitted,

/s/ MARK A. BRAND

Mark A. Brand
3300 Citicorp Center
1200 Smith Street
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ATTORNEY-IN-CHARGE FOR DEFENDANTS

Of Counsel:

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

---

Civil Action No. H-84-3506

ALI BOURESLAN, PLAINTIFF

*v.*

ARABIAN AMERICAN OIL COMPANY AKA ARAMCO, AND ARAMCO SERVICES COMPANY, DEFENDANTS

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[Filed Oct. 30, 1986]

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**DEFENDANT ARAMCO SERVICES COMPANY'S SECOND MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Aramco Services Company ("ASC"), one of the Defendants in the above-styled and numbered action, and files this its Motion to Dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. In support of this motion, ASC will show the Court the following:

I.

Plaintiff alleges that he was terminated in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et seq.*, on the basis of race, national origin and religion.

II.

On or about October 26, 1984, Plaintiff filed a discrimination charge against Defendant Arabian American Oil Company ("Aramco"). On or about February 8, 1985, Plaintiff filed a second discrimination charge against Aramco. Plaintiff failed to file a discrimination charge against ASC.

III.

Plaintiff's Title VII claim against ASC should be dismissed because the Court lacks jurisdiction over the subject matter.

IV.

Plaintiff has failed to exhaust his administrative remedies under Title VII and, therefore, Plaintiff's claim against ASC should be dismissed with prejudice.

V.

Plaintiff's claim against ASC is barred by the applicable statute of limitations, laches and/or waiver.

VI.

ASC has filed a memorandum of law which outlines the authorities and arguments in support of this Motion to Dismiss.

WHEREFORE, PREMISES CONSIDERED, Defendant ASC respectfully prays that Plaintiff's action be dismissed in its entirety, with prejudice, that judgment be entered in favor of Defendant ASC and against Plaintiff, that Plaintiff take nothing and that Defendant ASC have



such other and further relief, including attorney's fees, to which it may show itself justly entitled.

Respectfully submitted,

/s/ MARK A. BRAND
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. H-85-3506

ALI BOURESLAN, PLAINTIFF

*v.*

ARABIAN AMERICAN OIL COMPANY AKA ARAMCO AND
ARAMCO SERVICES COMPANY, DEFENDANTS

[Filed Oct. 30, 1986]

**COMPLAINT: DISCRIMINATION**

**AFFIDAVIT OF MOHAMMED SAEED AL-ALI**

Mohammed Saeed Al-Ali, being duly sworn, deposes and says:

(1) I am the Manager of the Industrial Relations Department of Aramco Services Company ("ASC"), a Defendant in this action. I have reviewed the Complaint filed herein by Ali Boureslan on June 20, 1985 and I have reviewed ASC's Motion to Dismiss. I submit this Affidavit in support of ASC's Motion to Dismiss Plaintiff's Complaint against ASC. The statements contained in this affidavit are based upon my personal knowiedge and a review of ASC corporate documents and records.



(2) ASC is a corporation incorporated in the State of Delaware with its principal place of business in Houston, Harris County, Texas. ASC is licensed to do business in Texas.

(3) The Arabian American Oil Company ("ARAMCO") is a corporation incorporated in the State of Delaware with its principal place of business in Dhahran, Saudi Arabia. ARAMCO is licensed to do business in Texas, but maintains no permanent office or place of business within the State of Texas.

(4) ASC's records reflect that Ali Boureslan was hired by ASC on July 16, 1979. Ali Boureslan was employed by ASC and worked for ASC in Houston, Texas. Ali Boureslan's last day of work for ASC was November 10, 1980 and ASC's records further reflect that Ali Boureslan has not worked for ASC at any time since November 10, 1980. As a result of Ali Boureslan's request to transfer to ARAMCO in Saudi Arabia and ARAMCO's agreement to employ him, Ali Boureslan was employed by ARAMCO in Saudi Arabia, beginning November 11, 1980 until his termination by ARAMCO in Saudi Arabia on June 16, 1984.

(5) ASC has had no connection or involvement with the work of Ali Boureslan for ARAMCO in Saudi Arabia, nor with the termination of Ali Boureslan's employment with ARAMCO there.

(6) During the period of ASC's employment of Ali Boureslan from July 16, 1979 to November 10, 1980, ASC has no record of any complaints of any kind lodged or filed by Ali Boureslan concerning his employment by ASC.

(7) No Charge of Discrimination against ASC by Ali Boureslan under Title VII or under any laws of the State of Texas or other laws of the United States has been filed with the Equal Employment Opportunity Commission or

with the Texas Commission on Human Rights and no such Charge has ever been served on ASC.

FURTHER, AFFIANT SAYETH NAUGHT.

/s/ MOHAMMED SAEED AL-ALI,
Mohammed Saeed Al-Ali,
Manager
Industrial Relations Dept.
Aramco Services Company

STATE OF TEXAS
COUNTY OF HARRIS

Sworn to and subscribed before me, the undersigned authority, on this the 30th day of October 1986.

/s/ Colleen M. Keller
Notary Public in and for
Harris County, Texas

COLLEN M. KELLER
Notary Public, State of Texas
My Commission Expires 12-20-88



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

---

Civil Action No. H-85-3506

ALI BOURESLAN, PLAINTIFF

*v.*

ARABIAN AMERICAN OIL COMPANY AKA ARAMCO AND ARAMCO SERVICES COMPANY, DEFENDANTS

---

[Filed Nov. 14, 1986]

---

**COMPLAINT: DISCRIMINATION**

---

DHAHRAN )
)
KINGDOM OF SAUDI ARABIA )

Before me, the undersigned authority, on this 29th day of October 1986 personally appeared Ahmed S. Humaid, Vice President of the Arabian American Oil Company who, upon first being duly sworn did depose and say:

1. I am Vice President of the Arabian American Oil Company and have been employed by the Arabian American Oil Company in various capacities since 1952.

2. I have been advised of the facts stated in the Arabian American Oil Company's Motion to Dismiss and Memorandum of Authorities in support thereof in Civil

Action No. H-85-3506. These facts of which I have been advised are true and correct according to the best of my personal knowledge, information and belief.

3. I have personal knowledge of the facts set forth in the within affidavit.

4. The Arabian American Oil Company in incorporated in the state of Delaware and has its principal place of business and business headquarters in Dhahran, Saudi Arabia.

5. The Arabian American Oil Company has one office in the United States located at 1667 K Street, N.W., Suite 1200, Washington DC 20006. That office is maintained for the limited purpose of maintaining continuing relations and exchanging information with the United States Department of State, other federal agencies, diplomatic missions and certain public and private educational and international organizations.

6. The Arabian American Oil Company is engaged in the business of exploring for, producing and refining oil and gas exclusively within the Kingdom of Saudi Arabia including its territorial waters. All of the Arabian American Oil Company's products are sold only within the Kingdom of Saudi Arabia and the Arabian American Oil Company does not market or distribute any products in the United States nor does it explore for, produce or refine oil and gas anywhere in the United States.

7. Arabian American Oil Company's assets are beneficially owned by the Kingdom of Saudi Arabia.

8. The Saudi Arab Government has charged Arabian American Oil Company with primary responsibility for the development of Saudi Arabia's fossil fuel resources.

9. The employment relationship between Ali Boureslan and the Arabian American Oil Company was solely performed and was terminated exclusively within the Kingdom of Saudi Arabia.



FURTHER, AFFIANT SAYETH NAUGHT.

Kingdom of Saudi Arabia )
Eastern Province )
Town of Dhahran )
Consulate General of the )
United States of America )

/s/ Ahmed S. Humaid
AHMED S. HUMAID
Vice President
Arabian American Oil Company

Sworn to and subscribed before me, the undersigned authority, on this the 29th day of October 1986.

/s/ Eric M. Maestas
Vice Consul of the
United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

---

Civil Action No. H-85-3506

ALI BOURESLAN, PLAINTIFF

*v.*

ARABIAN AMERICAN OIL COMPANY AKA ARAMCO AND
ARAMCO SERVICES COMPANY, DEFENDANTS

---

[Filed Nov. 14, 1986]

---

**COMPLAINT: DISCRIMINATION**

---

**DECLARATION OF ISMAIL S. NAZER**

I, ISMAIL S. NAZER, hereby declare:

1. I am an attorney at law duly licensed to practice in the Kingdom of Saudi Arabia. I have personal knowledge of the matters set forth herein and, if called upon, could competently testify thereto. I speak, read, and understand English and Arabic.

2. I have been engaged in the practice of law in the Courts of Saudi Arabia since 1952. My main office is located in Al Khobar, with branches in Damman and Riyadh, Saudi Arabia. I received my LL.B. from Kings College, London University, in 1950. In 1951, I was admitted to the English Bar (the Inns of Court of London).



I was admitted to the practice of law in the Kingdom of Jordan in 1952. I have been regularly engaged in the practice of law in the Courts of the Kingdom of Saudi Arabia since 1952, including before the Commissions which administer the Labor and Workmen Law of 1969 discussed below. My license is No. 5.

3. I am fully familiar with the laws and regulations of the Kingdom of Saudi Arabia. On numerous occasions I have lectured and published articles on the laws of the Kingdom of Saudi Arabia and on Islamic law. The Kingdom of Saudi Arabia has an extensive code, the Labor and Workmen Law of 1969, which regulates all employment within its borders, including that of citizens of foreign countries. This Code contains numerous substantive provisions and a procedural framework consisting of two judicial commissions by which aggrieved persons may vindicate their rights under the code. These commissions make no distinction between citizens of Saudi Arabia and foreign nationals who work in Saudi Arabia.

4. The Labor and Workmen Law represents a careful balancing of Saudi Arabia's desire to modernize its economy and commercial relations and Saudi Arabia's desire to maintain its system of Islamic moral, ethical, social and legal conduct. The general law of Saudi Arabia is the law of Islam, known as the "Shari'a." The Shari'a is predicated upon the principle that its laws are divine in origin. The chief source of the Shari'a is the Koran, which is accepted as the word of God as revealed to the prophet Muhammad by the angel Gabriel in the 7th century A.D. The Koran establishes general principles which govern both secular and religious life, together with specific provisions which regulate every day conduct. The Labor and Workmen Law is designed to provide realistic rules and procedures in an era of modern technology and commerce

while at the same time respecting the principles of Islam and its jurisprudence.

I declare under penalty of perjury under the laws of the United States of America and pursuant to 28 U.S.C. Section 1746(1) that the foregoing is true and correct.

Executed on 29th October 1986 at Dhahran, Saudi Arabia.

Kingdom of Saudi Arabia )
Eastern Province )
Town of Dhahran )
Consulate General of the )
United States of America )

/s/ Ismail S. Nazer
ISMAIL S. NAZER

SUBSCRIBED AND SWORN TO BEFORE ME THIS 29TH, DAY OF OCTOBER 1986 BY ISMAIL S. NAZER, ONLY

/s/ Eric M. Maestas
ERIC M. MAESTAS
Vice Consul of the
United States of America



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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Civil Action No. H-85-3506

ALI BOURESLAN

*v.*

ARAMCO, ARABIAN AMERICAN OIL COMPANY, AND ARAMCO SERVICES COMPANY

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[Filed Nov. 28, 1986]

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**JOINT PRETRIAL ORDER**

The parties, through counsel, request the entry of this Joint Pretrial Order in accordance with the provisions of Rule 16 of the Federal Rules of Civil Procedure and the local rules of this court.

**Appearance of Counsel**

Plaintiff, Ali Boureslan, is represented by Perry Archer, Paster & Archer, 4409 Montrose, Suite 214, Houston, TX 77006. Telephone: (713)-527-9459.

Defendants, Arabian American Oil Company ("Aramco") Aramco Services Company, ("ASC") are represented by Linda Ottinger Headley, Hutcheson & Grundy, 3300 Citicorp Center, 1200 Smith Street, Houston, TX 77006. Telephone: (713)-951-2891.

### Statement of the Case

Plaintiff files this suit pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) and other applicable laws of the State of Texas. Plaintiff alleges that he was mistreated by an Aramco supervisor because of his national origin, race and religion. Plaintiff further alleges that he was terminated from his employment in June 1984 because of his national origin, race and religion.

Defendants deny these claims and maintain that Plaintiff was terminated for legitimate business reasons. Defendant ASC states that this court lacks jurisdiction over the subject matter of this action under Title VII of the Civil Rights Act, 42 U.S.C. § 2000(e) et seq. because Plaintiff failed to exhaust his administrative remedies in that Defendant ASC was not named in Plaintiff's charge filed with the EEOC. Defendant ASC states further that this Court lacks jurisdiction under Title VII because Plaintiff was not an employee of ASC during the relevant time complained of by Plaintiff. Defendant Aramco states that this court lacks jurisdiction over the subject matter in that there is no extraterritorial jurisdiction under Title VII regarding employment in Saudi Arabia.

### Jurisdiction

Plaintiff asserts that this Court has jurisdiction by virtue of the fact that this case is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C., § 2000(e).

Jurisdiction of this Court to hear Plaintiff's claims based on discrimination is contested by Defendant as addressed in Defendants' pending motions and as set forth above in statement of the case.



### Motions

There are currently four motions pending before the court in this case:

1. Defendant Aramco's Motion to Dismiss on the ground that Title VII has no extraterritorial effect.
2. Defendant ASC's Motion to Dismiss on the ground that Plaintiff was not an employee of Defendant ASC.
3. Defendant ASC's Second Motion to Dismiss on the ground that Plaintiff failed to exhaust administrative remedies as to Defendant ASC.
4. Defendants' Motion for Expedited Hearing on the foregoing motions.

Plaintiff, through counsel, has responded to the motions to dismiss. The motions and responses are presently scheduled to be considered by the court on December 10, 1986.

### Contentions of the Parties

A. *Plaintiff's Contentions*

Plaintiff claims that on or about July of 1979, he began working for Aramco Services Company, having been hired in Texas. On or about November of 1980, he was transferred to Arabian American Oil Company in Saudi Arabia. His duties were those of an engineer and he performed them in satisfactory fashion from the beginning until the end of his employment. In September of 1982, Plaintiff's supervisor, George Thomson-Moore, began to mistreat and harass Plaintiff systematically concerning his national origin, race, and religion. This mistreatment and harassment began following disputes and arguments about Plaintiff's national origin, race, and religion. This mistreatment and harassment continued, and Plaintiff complained to his superiors but was ignored at first. In

February of 1983, he filed a formal grievance which resulted in apologies for the insults as to his national origin, race, and religion. His religion was Moslem. However, Plaintiff was told that racial, religious, and national origin harassment were personal matters between him and his supervisor and had nothing to do with his employer.

Until 1982, Defendants' evaluations of Plaintiff's performance were satisfactory or better; however, in early 1982, as a result of Plaintiff's conflicts with his supervisor about national origin, race, and religion and as a result of his complaints about the harassment, the supervisor set out to create a record that would justify firing Plaintiff and this was subsequently carried out on June 16, 1984. Plaintiff's salary at the time was $4,114.00 a month, and added to income tax benefits come to $52,000.00 a year. Plaintiff believes that the reasons for his discharge were pretextual and that he was discharged because of his national origin, race, and religion, and his unwillingness to accept the insults of Defendants' supervisory employees.

**B.** ***Defendants' Contentions***

Defendants deny the validity of Plaintiff's assertions and contend that Plaintiff has not stated a claim under Title VII, 42 U.S.C.A. § 2000(e) for which this court can grant relief.

The Plaintiff was not discriminated against in his employment with Defendant Aramco because of his national origin, race or religion or for any other actionable reason.

Plaintiff was employed by Aramco Services Company in July 1979 to work in Houston, Texas. In February 1980, Plaintiff requested a transfer to work for Defendant Aramco in Saudi Arabia. Plaintiff began work for Defendant Aramco in Saudi Arabia in November 1980.



Plaintiff filed a grievance complaining of mistreatment by his immediate supervisor. Plaintiff's grievance was the first notification to Aramco management of Plaintiff's allegations of employment discrimination. Defendant Aramco responded to Plaintiff's grievance by disciplining and demoting the supervisor to a point that the supervisor ultimately resigned. Based upon a review of Plaintiff's work, and with Plaintiff's agreement, Defendant Aramco transferred Plaintiff to provide Plaintiff with the opportunity to correct the problems with his work performance. Plaintiff was transferred to an Engineering III position with assignment of certain structural engineering responsibilities to allow Plaintiff to take advantage of his advanced degree in structural engineering.

Plaintiff was surplussed from employment with Aramco as part of a general manpower control reduction. Plaintiff's layoff was determined by his performance level which was based on several evaluations of Plaintiff's work. Such evaluations, by various supervisors, were an accurate reflection of Plaintiff's poor work performance. Plaintiff's salary at the time of his termination was $3,025.00 per month, with an annual salary of $36,300.00. Plaintiff's receipt of other money was solely due to his expatriate employment in Saudi Arabia and the corresponding company benefits. These additional payments were not salary.

Defendants further contend that Plaintiff is unable to show that the Defendants' legitimate, non-discriminatory business reasons for terminating Plaintiff were pretextual.

**Admissions of Fact**

It is anticipated that the following facts will require no proof at the time of trial:

1. Plaintiff was employed by Aramco Services Company in July, 1979 as a cost engineer.

2. Plaintiff was not harassed or mistreated while employed by ASC in the United States.
3. In February 1980, Plaintiff requested a transfer to work for Defendant Aramco in Saudi Arabia.
4. Plaintiff was transferred to and employed by Aramco in November, 1980 for assignment as a cost engineer in Saudi Arabia, and thereafter worked for Aramco in Saudi Arabia.
5. In February 1981 Plaintiff was assigned to be a construction engineer in Saudi Arabia.
6. Plaintiff's employment with Defendant Aramco in Saudi Arabia was terminated on June 16, 1984.
7. Plaintiff filed a grievance pertaining to Plaintiff's alleged mistreatment and harassment on the job by his direct supervisor at the time, Mr. George Thomson-Moore.
8. Plaintiff was subsequently transferred to work with the design group.
9. After the transfer described in No. 8, Plaintiff no longer reported to Mr. George Thomson-Moore.
10. While employed with the design group, Plaintiff's supervisors were H.A. Roos and Dan Christy, respectively.

**Joint Contested Issues of Fact**

The following are contested issues of fact:

1. Whether Plaintiff was an employee of Defendant Aramco Services Company when he worked as an engineer in Saudi Arabia.
2. Whether other employees of Aramco with better evaluation ratings than Plaintiff were surplussed before or at the same time as Plaintiff.



3. Whether Plaintiff's evaluation ratings were an accurate reflection of Plaintiff's work performance.
4. Whether Plaintiff's evaluation ratings were based on discriminatory reasons.
5. Whether Plaintiff was the subject of harassment in his employment by Defendant Aramco because of his national origin, race and religion.
6. If the answer to the preceding issue is in the affirmative, whether Defendant Aramco remedied such harassment by its actions in disciplining the supervisor complained of and transferring Plaintiff to another position.
7. If the answer to issue number 5 is in the affirmative, whether such harassment ultimately caused Plaintiff's discharge.
8. Whether Defendant Aramco disciplined Mr. George Thomson-Moore as a result of Plaintiff's grievance.
9. Whether Defendant Aramco knew of the alleged harassment of Plaintiff by his supervisor, Mr. Thomson-Moore prior to Plaintiff's initiating a grievance based on the alleged harassment.
10. Whether Defendant Aramco took corrective action after Plaintiff filed his grievance.
11. Whether Plaintiff was terminated by Defendant because of his national origin, race and religion.
12. Whether the Defendants' legitimate, non-discriminatory reason for terminating the Plaintiff was a pretext.
13. Whether Plaintiff is entitled to lost wages and benefits under Title VII of the Civil Rights Act of 1964, as amended, and if so the amount of such wages and benefits.

14. The amount of attorneys' fees to be recovered by Plaintiff's counsel in this matter.
15. Whether Plaintiff has mitigated his alleged damages.
16. Whether Plaintiff's lawsuit against Defendants was frivolous, vexatious, and/or without foundation.
17. If the answer to the preceding issue is in the affirmative, then the amount of any attorneys' fees to be recovered from Plaintiff and Plaintiff's counsel in this case by Defendants.

**Agreed Propositions of Law**

1. In a discrimination case under Title VII, Plaintiff has the initial burden of proving a prima facia case by a preponderance of the evidence. Once Plaintiff makes a prima facia showing, the Defendant has the burden of going forward with legitimate, non-discriminatory reasons for its actions. Should the Defendant carry his burden, the Plaintiff must then prove by a preponderance of the evidence that the legitimate reasons offered by the Defendant are actually a pretext for discrimination. The ultimate burden of persuasion remains at all times with the Plaintiff.

2. In a discrimination case, a prevailing Plaintiff is entitled to recover back pay, fringe benefits and reasonable attorneys' fees and costs. Back pay is measured by the difference between the salary or compensation an employee would have received but for the violation of the Act and the salary and compensation actually received. The relevant time period for measuring back pay begins from the time of discharge, which constitutes a violation through time of trial.



3. In a discrimination action the Plaintiff may seek reinstatement to his employment from which he was discharged.

4. If Plaintiff was not an employee of Aramco Services Company during the time of the acts complained of, this court does not have subject matter jurisdiction over Defendant ASC.

**Joint Contested Issues of Law**

1. Whether this court has jurisdiction over Plaintiff's discrimination claims under 42 U.S.C.A. § 2000(e) et seq. based on extraterritorial jurisdiction under Title VII.

2. Whether Defendants have presented a legitimate, non-discriminatory business reason for Plaintiff's discharge.

3. Whether the Plaintiff exhausted his administrative remedies as to Aramco Services Company.

4. Whether Defendant Aramco has liability for the alleged harassment of Plaintiff by his immediate supervisor, if Defendant Aramco was unaware of such harassment.

5. Whether the alleged harassment of Plaintiff by his supervisor, Mr. Thomson-Moore, would, if true, have affected a term, condition or privilege of employment within the meaning of Title VII.

6. Whether and to what extent Plaintiff is entitled to backpay and lost fringe benefits.

7. Whether and to what extent Plaintiff is entitled to recover front pay and future fringe benefits.

8. Whether and to what extent the Defendant is entitled to attorneys' fees and court costs.

9. Whether Plaintiff is entitled to reinstatement.

**Exhibits**

1. Counsel will provide at least two (2) copies of the list of all exhibits to be offered, excluding rebuttal exhibits, and will make all such exhibits available for examination by opposing counsel no later than December 1, 1986 or at least two (2) weeks prior to the trial of this case, if the trial setting of December 15, 1986 is continued. Each counsel will mark all exhibits to be offered and will list then on the standard form. All documentary exhibits will be exchanged prior to trial, except rebuttal exhibits which cannot be anticipated.

2. Any counsel requiring authentication of an exhibit must notify the offering counsel within five (5) days after the exhibit is made available. Failure to do so is an admission of authenticity.

3. Any other objections to admissibility of exhibits, where possible, must be made at least three business days before trial. The judge will be notified in writing with copies to all counsel accompanied by supporting legal authorities and copies of the exhibits in dispute.

4. All exhibits will be offered and received into evidence as the first item of business at the trial.

**Witnesses**

Each party has attached hereto two copies of a witness list containing the name of the witness who will or may be used by such party with a brief statement of the subject matter and substance of the testimony of each witness.

In the event there are any other witnesses to be called at the trial, their names and subject matter of their testimony shall be reported to opposing counsel as soon as they are known. This restriction shall not apply to rebuttal or impeaching witnesses, the necessity of whose testimony cannot reasonably be anticipated before the time of trial.



**Settlement**

This case cannot be settled and will have to be tried.

**Trial**

The trial of this case will take approximately three to four days.

Plaintiff's witnesses are available as far as counsel for Plaintiff knows at this time.

All witnesses for Defendants will be available with one week and one days' notice. The majority of Defendants' witnesses need to travel from Saudi Arabia. In order to obtain a travel visa from Saudi Arabia the Defense witnesses must receive notice of trial no later than the Friday of the week preceding the week before trial.

**Attachments**

Each party has attached their witness list.

Plaintiff and Defendants will provide the following items at least two weeks prior to the time of trial:

1. Exhibit List:
2. Proposed Conclusions of Law and Findings of Fact; and
3. Memorandum of Authorities

APPROVED and signed at Houston, Texas this ____ day of November, 1986

_____

United States District Judge

APPROVAL RECOMMENDED:

By: /s/ PERRY ARCHER (by LDH with permission)
Perry Archer
Attorney in Charge for Plaintiff

Date: 11/25/86

By: /s/ LINDA O. HEADLEY
Linda Ottinger Headley
Attorney in Charge for
Defendants

Date: November 25, 1986



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

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[Filed Dec. 10, 1986]

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**AFFIDAVIT**

STATE OF TEXAS

COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared affiant, who being duly sworn by me on oath stated as follows;

My name is Seth L. Sharr and I am employed by Aramco Services Company ("ASC") as the Vice President, Technical Services. I have personal knowledge of the following facts.

1. ASC is a Delaware corporation with its principal place of business in Houston, Texas. ASC does not have any facilities or operations in Saudi Arabia, nor are there any ASC employees permanently assigned in Saudi Arabia.

2. ASC performs contractual services for the Arabian American Oil Company ("Aramco") pursuant to a contract with Aramco. ASC is compensated for these contractual servies by Aramco.

3. ASC owns and maintains offices at 9009 West Loop South in Houston, Texas. ASC and Aramco do not share any office facilities. Aramco's principal offices are in Saudi Arabia.

4. All of the shares of stock of Aramco are owned by Texaco, Exxon, Mobil and Chevron, or their subsidiaries. Aramco holds all the stock of ASC.

5. ASC and Aramco have no common corporate officers, directors, supervisors or management employees. ASC has separate corporate meetings, minutes and resolutions from Aramco. ASC does not issue policy manuals or directives to Aramco.

6. ASC maintains and controls its own bank accounts. ASC makes purchases, obtains credit, and has its own payroll independent from the Aramco payroll. ASC has no responsibility for the debts or other obligations of Aramco and Aramco is not responsible for any debts or other obligations of ASC.

7. ASC participates in a Retirement Income Plan, Savings Plan and other employee benefit plans, some of which are administered by Aramco or through committees located in Dhahran, Saudi Arabia. The eligibility of ASC employees for the benefit plans is determined separately by ASC for its own employees.

8. ASC does not share telephone or telex numbers with Aramco. ASC owns and maintains its own diverse equipment in the United States. ASC maintains its own separate accounting records, financial statements, budgets, billings, bank accounts, lines of credit, and payroll accounts. ASC prepares its own payroll. ASC files separate corporate tax returns from Aramco.

9. ASC has its own Employee Relations Manual independent from Aramco's Employee Relations Manual. ASC maintains its own payroll account and no employees of ASC are also employees of Aramco. ASC supervises and manages only its own employees, including evaluating, disciplining and handling the grievances of its own employees.

10. When an ASC employee transfers to work for Aramco, it is a permanent transfer and the employment relationship with ASC is terminated. ASC had no involvement in any decisions regarding employment matters related to Ali Boureslan's employment by Aramco in Saudi Arabia.



/s/ SETH L. SHARR
Seth L. Sharr

SWORN TO AND SUBSCRIBED before me, the undersigned authority by SETH L. SHARR on this the 9th day of December 1986.

/s/ Colleen M. Keller
Notary Public in and for
Harris County, Texas

COLLEN M. KELLER
Notary Public, State of Texas
My Commission Expires 12-20-88

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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Civil Action No. H-85-3506

ALI BOURESLAN

*v.*

ARAMCO, ARABIAN AMERICAN OIL COMPANY AND
ARAMCO SERVICES COMPANY

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**FINAL JUDGMENT**

Pursuant to the Court's Memorandum and Order filed in the above-referenced cause on this date, final judgment is hereby entered for DEFENDANTS Arabian American Oil Company and Aramco Services Company.

This is a Final Judgment.

DONE in Houston, Texas, this 27th day of January, 1987.

/s/ JAMES DEANDA
James DeAnda
United States District Judge



**TITLE 29 – LABOR**

**Chapter XIV – Equal Employment Opportunity Commission**

**PART 1606 – GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN**

By virtue of the authority vested in it by section 713(b) of the Act, 42 U.S.C. section 2000e-12(b), the Commission hereby issues Title 29, Chapter XIV, § 1606.1 in the Code of the Federal Regulations.

Because the provisions of the Administrative Procedure Act (5 U.S.C. 1003) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date, are inapplicable to these interpretative rules, the guideline shall become effective immediately and shall be applicable with respect to charges presently before or hereafter filed with the Commission.

**§ 1601. Guidelines on discrimination because of national origin.**

(a) The Commission is aware of the widespread practices of discrimination on the basis of national origin, and intends to apply the full force of law to eliminate such discrimination. The bona fide occupational qualification exception as it pertains to national origin cases shall be strictly construed.

(b) Title VII is intended to eliminate covert as well as the overt practices of discrimination, and the Commission will, therefore, examine with particular concern cases where persons within the jurisdiction of the Commission have been denied equal employment opportunity for reasons which are grounded in national origin considerations. Examples of cases of this character which have come to the attention of the Commission include: The use of tests in the English language where the individual tested came from circumstances where English was not that person's first language or mother tongue, and where English

language skill is not a requirement of the work to be performed; denial of equal opportunity to persons married to or associated with persons of a specific national origin; denial of equal opportunity because of membership in lawful organizations identified with or seeking to promote the interests of national groups; denial of equal opportunity because of attendance at school or churches commonly utilized by persons of a given national origin; denial of equal opportunity because their name or that of their spouse reflects a certain national origin, and denial of equal opportunity to persons who as a class of persons tend to fall outside national norms for height and weight where such height and weight specifications are not necessary for the performance of the work involved.

(c) Title VII of the Civil Rights Act of 1964 protects all individuals, both citizen and noncitizens, domiciled or residing in the United States, against discrimination on the basis of race, color, religion, sex, or national origin.

(d) Because discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in this country may not be discriminated against on the basis of his citizenship, except that it is not an unlawful employment practice for an employer, pursuant to section 703(g), to refuse to employ any person who does not fulfill the requirements imposed in the interests of national security pursuant to any statute of the United States or any Executive order of the President respecting the particular position or the particular premises in question.

(e) In addition, some States have enacted laws prohibiting the employment of noncitizens. For the reasons stated above such laws are in conflict with and are, therefore, superseded by Title VII of the Civil Rights Act of 1964.

(Sec. 713. 78 Stat. 265, 42 U.S.C., sec. 2000e-12)



This guideline is effective upon publication.

Signed at Washington, D.C., this the 7th day of January 1970.

[SEAL]

WILLIAM H. BROWN, III,
*Chairman.*

[F.R. Doc. 70-447; Filed, Jan. 9, 1970; 11:54 a.m.)

14 MAR 1975

Senator Frank Church
Attn: Jeffery Shields
Sub-Committee on Multi-National Corp.
Senate Foreign Relations Committee
U.S. Senate
Washington, D.C. 20510

Dear Senator Church:

The following is in response to a telephone request from Mr. Jeffery Shields, March 14, 1975, concerning whether Title VII of the Civil Rights Act of 1964, as amended, was applicable to American companies operating overseas with respect to American employees of such overseas operations.

The Supreme Court has clearly stated that Congress has the power to enact legislation which has extraterritorial effect, see *Blackner* v. *U.S.*, 248 U.S. 421, 52 S. Ct. 252 (1932). Whether a particular statute does operate extraterritorially depends on the intent of Congress in enacting the legislation. The language of Title VII indicates a Congressional intent to make the Title applicable to American citizens employed by American companies operating overseas.

Section 703 provides that it is unlawful to discriminate against "any individual" with respect to his employment. The section, in defining what kinds of discrimination are prohibited, constantly uses the term "any individual." The only exception to "any individual" appears to be that contained in Section 702, i.e., aliens working outside the U.S. and to employees of certain religious and educational institutions.

Giving Section 702 its normal meaning would indicate a Congressional intent to exclude from the coverage of the



statute aliens employed by covered employers working in the employers' operations outside of the United States.

The reason for such exclusions is obvious; employment conditions in foreign countries are beyond the control of Congress. The section does not similarly exempt from the provisions of the Act, U.S. Citizens employed abroad by U.S. employers. If Section 702 is to have any meaning at all, therefore, it is necessary to construe it as expressing a Congressional intent to extend the coverage of Title VII to include employment conditions of citizens in overseas operations of domestic corporations at the same time it excludes aliens of the domestic corporation from the operation of the statute.

This interpretation of Section 702 is consistent with the purpose of the Act, which is remedial, to remove the barriers that have operated in the past to favor certain classes of employees over others, *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 91 S Ct. 849 (1971).

Overseas employment practices of covered employers can have a very substantial impact on the employment opportunities in domestic corporations. Overseas assignment, for example, for a period of time may be very necessary for advancement in domestic operations. Thus, unless the Act is construed to cover employment conditions of American citizens working abroad for U.S. Corporations, employees in the corporation's domestic operations will not be afforded the protection that Title VII was intended to confer. Courts have traditionally construed laws to have extraterritorial effect when the failure to do so would have an adverse domestic impact.

If we can be of any further assistance please do not hesitate to contact us.

Sincerely,

William A. Carey
General Counsel

# Supreme Court of the United States

No. 89-1838

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PETITIONER

*v.*

ARABIAN AMERICAN OIL COMPANY AND ARAMCO SERVICES COMPANY

ORDER ALLOWING CERTIORARI. Filed October 1, 1990.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. This case is consolidated with 89-1845, *Ali Bourselan* v. *Arabian American Oil Company and Aramco Services Company* and a total of one hour is allotted for oral argument.

October 1, 1990



# Supreme Court of the United States

No. 89-1845

ALI BOURSELAN, PETITIONER

*v.*

ARABIAN AMERICAN OIL COMPANY AND ARAMCO SERVICES COMPANY

ORDER ALLOWING CERTIORARI. Filed October 1, 1990.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. This case is consolidated with 89-1838, *Equal Employment Opportunity Commission* v. *Arabian American Oil Company and Aramco Services Company* and a total of one hour is allotted for oral argument.

October 1, 1990

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